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January 26, 2005

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 25, 2004

Case Number: TSO-0116

This decision concerns the eligibility of XXX XXX XXX (hereinafter referred to as "the Individual") to maintain an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."¹ The local DOE security office (the LSO) suspended the Individual's access authorization under the provisions of Part 710. This decision considers whether, on the basis of the evidence in this proceeding, the Individual's access authorization should be restored. For the reasons stated below, the Individual's access authorization should not be restored.

I. BACKGROUND

The present case concerns an Individual who has been diagnosed with Alcohol Abuse. Both of the expert witnesses who testified at his hearing agree that this diagnosis is accurate. However, the expert witnesses disagree about the extent of the Individual's rehabilitation or reformation.

The events leading to this proceeding began when the LSO received information indicating that the Individual's ex-wife had obtained a restraining order against him. A personnel security interview (PSI) of the Individual was conducted. The Individual was then asked to submit to an examination by a DOE Psychiatrist. On November 20, 2002, the DOE Psychiatrist conducted a forensic psychiatric examination of the Individual. In addition to conducting this examination, the DOE Psychiatrist reviewed selected portions of the Individual's security file including legal records

¹An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

concerning an incident in which the Individual struck his then wife.² On December 3, 2002, the DOE Psychiatrist issued a report in which she stated that the Individual met the criteria for Alcohol Abuse, set forth in Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR). DOE Psychiatrist's Report of Examination at 12. The DOE Psychiatrist, noting that the Individual had never sought counseling or treatment for his alcohol abuse, further opined that the Individual was not sufficiently rehabilitated or reformed to resolve the security concerns raised by his Alcohol Abuse. The DOE Psychiatrist opined that in order to establish *rehabilitation* from his Alcohol Abuse, the Individual must attend a minimum of 25 hours of a professionally-led substance abuse treatment program or 3 months of individual counseling *and* abstain from the use of alcohol for a minimum of three months *following the completion of the treatment program*. DOE Psychiatrist's Report of Examination at 13. The DOE Psychiatrist opined that in order to establish *reformation* from his Alcohol Abuse, the Individual must maintain one year of sobriety. DOE Psychiatrist's Report of Examination at 13.

An administrative review proceeding was initiated. *See* 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the Notification Letter). The Notification letter alleges that the Individual has "been, or is, a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse." 10 C.F.R. § 710.8(j) (Criterion J). The Notification Letter also alleges that the Individual has: "an illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability." 10 C.F.R. § 710.8(h) (Criterion H).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA) who appointed me as Hearing Officer.

At the Hearing, the LSO presented one witness: the DOE Psychiatrist. The Individual presented five witnesses: his fiancée, his sister, his niece, a coworker and his Counselor (the Counselor) who treats him on a regular basis. The Individual also testified on his own behalf. *See* Transcript of Hearing, Case No. TSO-0116 (hereinafter cited as "Tr.").

II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The

² This incident apparently occurred while the Individual was under the influence of alcohol. The DOE Psychiatrist did not find that this incident raised any mental health concerns, other than constituting evidence of an Alcohol Abuse disorder. Surprisingly, this incident was not identified as derogatory information in the Notification Letter. Accordingly, I did not consider it in making my decision.

regulations state that “[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest.” 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

III. FINDINGS OF LAW AND FACT

A reliable diagnosis of alcohol abuse raises significant security concerns under Criteria J and H. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, 25 DOE ¶ 82,755; *aff'd, Personnel Security Review*, 25 DOE ¶ 83,002 (affirmed by OSA, 1995). In these proceedings, it was recognized that an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing (Case No. VSO-0244)*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing (Case No. VSO-0154)*, 26 DOE ¶ 82,794 (1997), *aff'd, Personnel Security Review (Case No. VSA-0154)*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, the only issue before me is whether the Individual has submitted sufficient evidence of rehabilitation and reformation to resolve the security concerns raised by his Alcohol Abuse. After considering all of the evidence in the record, I find that he has not.

By the time of the hearing, the Individual had taken a number of important steps in order to address his Alcohol Abuse. Specifically, the Record indicates that, at the time of the Hearing, the Individual had been obtaining counseling for approximately two and a half months. Tr. at 48. Most importantly, the Record indicates that, at the time of the Hearing, the Individual had abstained from using alcohol for approximately the same time period. Tr. at 49. However, the testimony of the Individual and the two expert witnesses convinced me that, at the time of the Hearing, the Individual had not yet progressed sufficiently in his sobriety to resolve the security concerns raised by his Alcohol Abuse.

The DOE Psychiatrist testified at the onset of the Hearing. Essentially, the DOE Psychiatrist reiterated the conclusions set forth in her December 3, 2002 Report of Examination. Specifically, the DOE Psychiatrist noted that the Individual had developed a tolerance to alcohol, Tr. at 12, and had repeatedly used alcohol in physically hazardous situations by regularly driving while intoxicated. Tr. at 14-15. Based on these factors, the DOE Psychiatrist concluded that the Individual suffers from Alcohol Abuse. Tr. at 14. The DOE Psychiatrist further noted that at the time of her examination, the Individual was continuing to use alcohol and had not sought treatment or received any formal education concerning alcohol abuse. Tr. at 17 and 18. Accordingly, the DOE Psychiatrist testified that there was no evidence of rehabilitation or reformation at the time of her examination. Tr. at 18.

The Individual's testimony followed the DOE Psychiatrist. The Individual testified that he had probably exaggerated the extent of his drinking during the psychiatric interview. Tr. at 40-41. The Individual testified that as a result of his discussion with the DOE Psychiatrist, he had greatly reduced his drinking and had stopped driving when using alcohol. Tr. at 41-43. The Individual's testimony indicated that he did not stop drinking until he received a copy of the DOE Psychiatrist's Report of Examination, approximately two and a half months prior to the Hearing. Tr. at 44, 48-49.

The Counselor testified at the Hearing. The Counselor testified that he had been seeing the Individual once a week for the prior two and a half to three months. Tr. at 57.³ The Counselor testified that he was in basic agreement with the conclusions reached by the DOE Psychiatrist in her report. Tr. at 56. The Counselor also agreed that the appropriate diagnosis for the Individual is Alcohol Abuse in Remission. Tr. at 64. The Counselor cited a number of positive factors. Specifically, the Counselor noted that the Individual has stopped drinking, Tr. at 57; has gained some awareness of "his issues with drinking," Tr. at 57; has been a willing participant in his therapy, Tr. at 60; and has a familial and social support system, Tr. at 64-65. The Counselor further testified that he expected that the Individual would continue to refrain from using alcohol. Tr. at 64. The Counselor testified that the Individual's ability to quit drinking without remorse or regret was an important factor underlying his confidence that the Individual would be able to maintain his sobriety. Tr. at 64-65. Most important, however, was the Counselor's testimony that he thought the Individual needs six months of sobriety before he was "out of the woods." Tr. at 65-66 and 99.

After testifying, the DOE Psychiatrist remained in the hearing room and observed the testimony of the Individual and the other witnesses. The DOE Psychiatrist was then called back to the stand. At this point the DOE Psychiatrist testified that, in her opinion, the Individual had not shown that he

³ The Counselor testified that he had conducted two psychological tests on the Individual, including the Substance Abuse Screening Inventory and the Substance Administered Alcohol Screening Test, which were designed to detect any substance abuse issues the Individual might have. Tr. at 55. The Counselor also testified that, in order to obtain an independent outside opinion, he had referred the Individual to a local organization (the Local Organization) which screens for and treats substance abuse disorders. Tr. at 58. The Local Organization conducted a screening of the Individual and found no evidence of a substance abuse disorder. September 30, 2004 Letter from the Local Organization to the Counselor.

had been sufficiently rehabilitated or reformed. Tr. at 87. The DOE Psychiatrist testified that the Individual still remained at moderate risk for relapse. Tr. at 89 and 96. The DOE Psychiatrist further testified that the Individual needs at least three more months of sobriety in order to be sufficiently rehabilitated. Tr. at 90 and 94. She testified that the Individual was only in the third of six stages of recovery. Tr. at 96.

After carefully considering all the evidence in the Record including the testimony provided at the Hearing, I am not convinced that there is sufficient evidence of rehabilitation or reformation to resolve the security concerns raised by the Individual's Alcohol Abuse. Both experts agreed at the Hearing that the Individual needed at least three more months of sobriety in order to establish rehabilitation. I found their testimony to be credible and entitled to great weight and I agree with them.

IV. CONCLUSION

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria J and H. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual's access authorization should not be restored at this time. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine
Hearing Officer
Office of Hearings and Appeals

Date: January 26, 2005